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09/652,927	08/31/2000	Theodore W. Meyers		4367

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EXAMINER

LUGO, CARLOS

ART UNIT

PAPER NUMBER

3677

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/652,927	MEYERS, THEODORE W.
	Examiner Carlos Lugo	Art Unit 3677

– The MAILING DATE of this communication appears on the cover sheet with the correspondence address –
Period for Reply

**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM
THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 28 May 2002 .

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-6 and 15-23 is/are pending in the application.

4a) Of the above claim(s) 7-14 and 24 is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-10, 13-24 is/are rejected.

7) Claim(s) 11 and 12 is/are objected to.

8) Claim(s) 25-27 are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on 28 May 2002 is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

- Certified copies of the priority documents have been received.
- Certified copies of the priority documents have been received in Application No. _____.
- Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____	6) <input type="checkbox"/> Other: _____

DETAILED ACTION

1. This office action is in response to applicants amendments filed on May 28, 2002, wherein claims 7-14 and 24 were withdraw from consideration.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. **Claims 1-3,5,15-17 and 20-23 are rejected** under 35 U.S.C. 103(a) as being unpatentable over US Pat No 3,633,943 to Ramm in view of US Pat No 5,482,621 to Nurse.

Regarding claims 1,16,17,20 and 23, Ramm discloses a tee divided in two mating halves (element 2). When they are connected, they form a main body (elements 6 and 4 at the bottom of each halve), defining a tubular opening. A cylindrical uppermost hub (above elements 4 and 6 at the top of each halve), coaxial with the main body and having an inner diameter greater than the diameter of the main body. An inlet/outlet port (element 8) in communication with the tubular opening. The hub can be connected to a tubular pipe.

However, Ramm fails to teach that the main body is elongated. Ramm illustrates a normal tee.

Nurse teaches a tee (element 3) having an elongated main body that receives a filter (element 11) to be use in a septic tank system. Nurse teaches that the

lowermost end (element 5) of a main body (element 3) extends into a clear zone of a septic tank (element 1).

Applicant is reminded that a change in the size of a prior art device is a design consideration within the skill of the art. In re Rose, 220 F.2d 459, 105 USPQ 237 (CCPA 1955).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have a tee with an elongated main body, as taught by Nurse, into Ramm's invention, in order to have a one-embodiment tee instead of using another component for the same purpose.

As to claims 2 and 21, Ramm discloses that when the two mating halves are connected, they form a first and a second rib (element 14) extending longitudinally along the main body.

As to claim 3, Ramm illustrates that the tee comprises seams coextending with the first and the second ribs.

As to claim 5, Ramm discloses that the tee comprises at least one horizontal reinforcement rib (element 36) on the outer wall of the main body.

As to claims 15 and 22, Ramm fails to disclose that the wall thickness of the main body is between .075" to .1".

That kind of range in the wall thickness is standard for pipes. Applicant is reminded that a change in the size of a prior art device is a design consideration within the skill of the art. In re Rose, 220 F.2d 459, 105 USPQ 237 (CCPA 1955).

4. **Claims 4 and 19 are rejected** under 35 U.S.C. 103(a) as being unpatentable over US Pat No 3,633,943 to Ramm and US Pat No 5,482,621 to Nurse in view of U.S. Pat. No 6,136,190 to Zoeller et al (Zoeller).

Regarding claim 4, Ramm, as modified by Nurse, discloses the invention substantially as claimed. However, the combination fails to teach that the inlet/outlet port includes an outlet opening and a sweep portion arcing upwardly from the elongated main body toward a ring defined by the outlet portion. The sweep portion defines an opening in communication with the tubular opening and the outlet opening. Ramm discloses everything except that the sweep portion arcing upwardly.

Zoeller discloses a tee comprising an elongated generally cylindrical main body (element 30) defining a tubular opening, a cylindrical uppermost hub (element 29) coaxial with the elongated main body and having an inner diameter greater than the diameter of the elongated main body and an inlet/outlet port (element 16) in communication with the elongated main body. The inlet/outlet port includes an outlet opening (element 26) and a sweep portion arcing upwardly from the elongated main body toward a ring defined by the outlet portion. The sweep portion defines an opening in communication with the tubular opening and the outlet opening.

Applicant is reminded that a change in the shape of a prior art device is a design consideration within the skill of the art. In re Dailey, 357 F.2d 669, 149 USPQ 47 (CCPA 1966).

Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention was made to have a sweep portion that arc upwardly in the

tee described by Ramm, as modified by Nurse, as taught by Zoeller, because it would only be a change in the shape. It would not make a change in the flow of a fluid through it.

As to claim 19, Zoeller illustrates that the outlet opening of the inlet/outlet port is located along a length between the lowermost end and the uppermost hub, but near to the uppermost hub.

5. Claims 6 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Pat No 3,633,943 to Ramm and US Pat No 5,482,621 to Nurse in view of US Pat No 5,022,684 to Eagon.

Ramm, as modified by Nurse, fails to disclose the use of a reducer bushing received on the inlet/outlet port.

Eagon teaches that is known in the art the use of a reducer (element 114) to connect two conduits of different diameters.

Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use a reducer member in the inlet/outlet port of Ramm device, as taught by Eagon, in order to have a diversity of conduits with different diameters connected to the inlet/outlet port.

Election/Restrictions

6. Newly submitted claims 25-27 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons:

- The originally set of claims was directed to a tee. The new submitted set of claims (25 to 27) is directly to the combination of the tee with a filter.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 25-27 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Response to Arguments

7. Applicant's arguments filed on May 28, 2002 have been fully considered but they are not persuasive.

Regarding applicant's arguments in Page 9, regarding claims 1 and 23, applicant establishes that Ramm fails to disclose the invention as claimed.

Applicant points out that the tee is for use in a septic tank system and that the main body of the tee is adapted to receive a filter. Also, the applicant mentions that the tee further comprises an inlet/outlet port that has an inlet/outlet hub. The inlet/outlet hub has a diameter sized to receive a pipe of a second diameter. The inlet/outlet hub diameter is greater than the diameter of the main body.

The fact that the tee is for use in a septic tank system and that the main body of the tee is adapted to receive a filter is consider that as the intended use of the tee. The invention is directly to a tee having a main body that can be divided in two equally pieces, as disclosed by Ramm.

As to the fact that the tee comprises an inlet/outlet port, having an inlet/outlet hub with a diameter sized to receive a pipe of a second diameter and greater than the diameter of the main body, Ramm discloses the invention as claimed.

Ramm fails to disclose that the main body is an elongated main body. Nurse teaches an elongated tee for use in a septic tank system. Furthermore, Nurse teaches that the tee receives a filter.

As to applicant's arguments in Page 10, regarding claim 4, applicant establishes that inlet/outlet port includes an outlet opening and a sweep portion arcing upwardly from the elongated main body toward a ring defined by the outlet portion.

Ramm, as modified by nurse, discloses that the tee comprises an opening in the inlet/outlet port and a sweep portion. Zoeller teaches that the sweep portion arcs upwardly.

As to applicant's arguments in Page 11, regarding claims 6 and 18, applicant establishes that the tee includes a bushing received on the inlet/outlet port.

Eagon teaches that is known in the art the use of a bushing in order to adapt conduits of different diameters.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

As to applicant's arguments in Page 12, regarding claim 20, applicant establishes that the lowermost end of a main body extends into a clear zone of a septic tank.

Ramm, as modified by Nurse, discloses that the lowermost end of a main body extends into a clear zone of a septic tank.

Allowable Subject Matter

8. Claims 11 and 12 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Conclusion

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carlos Lugo. The examiner phone number is (703)-305-9747, the fax number is (703)-308-3691 and the examiner email is the following:

carlos.lugo@uspto.gov. The examiner can normally be reached on Monday to Friday from 8:00am to 5:00pm. If the examiner is not available, please leave a message, including the application number and the examiner will answer the message as soon as possible.

June 21, 2002



ROBERT J. SANDY
PRIMARY EXAMINER